

APR 20 2007

Application No.: 10/772,703

4

Docket No.: 297912002103

REMARKS

The Office Action, mailed December 4, 2006, has been reviewed and the Examiner's comments considered. Applicants note with appreciation the time set aside by the Examiner to discuss the outstanding rejection of the claims in an interview on April 19, 2007, the details of which are below. Claims 42, 46, and 50-51 are pending in this application. Claims 43-45, 47-49 and 52-53 are canceled by this amendment. Applicant reserves the right to pursue the subject matter of these canceled claims in a future application. Claims 42 and 50 are amended herein. Applicant submits that no new matter or issues have been introduced.

Statement on Substance of Interview

The interview was conducted via telephone on April 19, 2007, between the undersigned, Mr. David Bogert, Senior Engineer, Bard Peripheral Vascular, Inc., and Examiner Walter Aughenbaugh. Claims 42-53 were discussed in view of the claim rejections under 35 U.S.C. § 112, first and second paragraphs. In particular, each of the following rejections were discussed:

- 1) The rejection of claims 42 and 50 under 35 U.S.C. § 112, first paragraph (made of record in paragraph 8 of the Office Action mailed February 9, 2006).
- 2) The rejection of claims 42, 50, 52 and 53 under 35 U.S.C. § 112, first paragraph (made of record in paragraph 9 of the Office Action mailed February 9, 2006).
- 3) The rejection of claims 42, 50 and 53 under 35 U.S.C. § 112, second paragraph (made of record in paragraph 11 of the Office Action mailed February 9, 2006).

Applicant explained to the Examiner's satisfaction the meaning of Radial Expansion Ratio (RER) in view of the specification. Applicant pointed to the examples in the specification showing a RER of 1.0 (e.g., Tables XI, XII and XVII) and its calculation. In addition, the pre-dilatation procedure was discussed in view of the description on p. 15, lines 21-26 of the specification. Also, the amendment to claim 42 made herein was proposed and accepted, as was the cancellation of claim 53. The Examiner indicated that in view of the discussion and proposed claim

oc-321615

Application No.: 10/772,703

5

Docket No.: 297912002103

amendments, the rejections of independent claims 42 and 50 under 35 U.S.C. § 112 would be withdrawn.

Objections - Specification

The amendment filed November 28, 2005 stands objected to under 35 U.S.C. § 132(a) because it introduces new matter into the disclosure. In particular, claims 50, 52 and 53 were objected to as allegedly containing added material not supported by the original disclosure (i.e., the recitation, "greater than the original diameter"). Claim 50 is amended herein to remove the objected to recitation and claims 52-53 are canceled. Therefore, Applicant respectfully requests withdrawal of this objection.

Objections - Claims

Claim 53 stands objected to under 37 CFR § 1.75(c) as being of improper dependent form for failing to further limit the claim. Claim 53 is canceled herein thereby obviating this objection and Applicant respectfully requests withdrawal thereof.

Claim Rejections - 35 U.S.C. § 112

Claims 42 and 50 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement (made of record in paragraph 8 of the Office Action mailed February 9, 2006). Claims 42, 50, 52 and 53 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement (made of record in paragraph 9 of the Office Action mailed February 9, 2006). Claims 42, 50 and 53 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention (made of record in paragraph 11 of the Office Action mailed February 9, 2006). As discussed above, the Examiner indicated in the interview on April 19, 2007 that these rejections would be withdrawn and, accordingly, Applicant respectfully requests the formal withdrawal thereof.

oc-321615

APR 20 2007

Application No.: 10/772,703

6

Docket No.: 297912002103

Claim Rejections - 35 U.S.C. § 102

Claims 42, 50, 52 and 53 stand rejected under 35 USC § 102(b) as being anticipated by USPN 3,962,153 to Gore (hereinafter, "Gore"). Applicant respectfully traverses this rejection.

The Examiner states in the reasons for rejection (made of record in paragraph 12 of the Office Action mailed February 9, 2006) that the recitation of "said tube exhibiting a radial expansion ratio of 1.0" (claim 42) and "the radial expansion ratio of the tube is about 1.0" (claim 50) cannot be treated due to the indefiniteness thereof. In view of the indicated withdrawal of the rejections of claims 42 and 50 under 35 U.S.C. § 112, Applicant respectfully submits that the recitation of features directed to radial expansion ratio should now be considered in view of Gore. However, Gore does not show or describe the aforementioned features, nor are these features inherent in Gore, at least because Gore shows and describes a tube radially dilated with pressure and thereafter cooled rapidly "[w]hile still maintaining pressure to prevent tubing collapse" (col. 14, lines 49-60). This is in contradistinction to the claimed invention of a pre-dilated tube "sintered to contract said tube to the original inner diameter" (claim 42) and "a pre-dilated tube that is sintered to form a contracted tube" (claim 50).

Accordingly, claims 42 and 50 are believed to be patentable over Gore because Gore does not show or describe all of the claim limitations therein. Therefore, Applicant respectfully requests withdrawal of this rejection.

Claim Rejections - 35 U.S.C. § 103

Claims 43-45 stand rejected under 35 USC §103(a) as being unpatentable over USPN 3,962,153 to Gore in view of USPN 4,187,390 to Gore. Claims 46-49 and 51 stand rejected under 35 USC §103(a) as being unpatentable over USPN 3,962,153 to Gore in view of USPN 5,618,300 to Marin et al. Applicant respectfully traverses these rejections.

Claims 43-45 and 47-49 are canceled by this amendment. With respect to remaining claims 46 and 51, each is believed to be patentable in view of the cited combination of references at

oc-321615

Application No.: 10/772,703

7

Docket No.: 297912002103

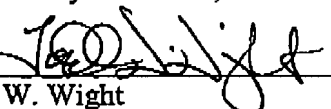
least because each is dependent on a patentable independent claim, as discussed above. Therefore, Applicant respectfully requests withdrawal of these rejections.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 297912002103. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: April 20, 2007

Respectfully submitted,

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oc-321615